



**Federal Communications Commission
Washington, D.C. 20554**

August 27, 2008

DA 08-1989

In Reply Refer to:

1800B3-TEC

Released: August 27, 2008

King's College
c/o WRKC(FM)
133 N. Franklin Street
Wilkes-Barre, PA 18711

Re: **King's College**
WRKC(FM), Wilkes-Barre, PA
Facility ID No. 34899
File No. BRED-20060327AGC
Application for Renewal of License

Dear Applicant:

We have before us the captioned application (the "Application") of King's College for renewal of license of noncommercial educational ("NCE") Station WRKC(FM), Wilkes-Barre, Pennsylvania (the "Station").¹ We also have before us Informal Objections ("Objections") filed by Mario Fiorucci and Richard Aston (collectively, the "Objectors") on May 3, 2006, and May 8, 2006, respectively. On June 29, 2006, King's College filed an Opposition to the Objections ("Opposition"). For the reasons set forth below, we deny the Objections and grant the Application.

Background. King's College timely filed the Application on March 28, 2006. In the Objections, the Objectors claim that the Application should be denied because the Station's general manager, Sue Henry ("Henry"), purportedly censored the content of several syndicated programs formerly broadcast on the Station.² Specifically, the Objectors claim that Henry used her influence as general manager to have volunteer radio announcer Jim Spak cease broadcasting "Radio Nation," "CounterSpin," and "Making Contact" because Henry did not agree with their political content.³ In response, Henry writes on behalf of King's College, stating that she discontinued the programs because they offered commentary inconsistent with King's College's mission as a private, Catholic institution.⁴ Henry notes that another station serving the Wilkes-Barre community carries these programs, so listeners can still hear them if they so choose.⁵

¹ FCC File No. BRED-20060327AGC.

² *Letter from Richard Aston to Marlene H. Dortch, Secretary, Federal Communications Commission* (May 1, 2006) ("Aston Objection Letter") at 1.

³ *Id.*; see also *Letter from Mario Fiorucci to Marlene H. Dortch, Secretary, Federal Communications Commission* (Apr. 26, 2006) ("Fiorucci Objection Letter") at 1.

⁴ Opposition at 1.

⁵ *Id.*

Henry also describes some of the Station's other programming that would be denied to listeners if the Commission were to deny the Application.⁶

Discussion. Pursuant to Section 309(e) of the Communications Act of 1934, as amended (the "Act"),⁷ informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with Section 309(k) of the Act,⁸ which governs our evaluation of an application for license renewal. Section 309(k)(1) provides that we are to grant the renewal application if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission's Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.⁹ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."¹⁰

The Objectors request that we deny the Application because of Henry's decision on behalf of King's College to "censor[] [certain] 'liberal' programming" on the Station.¹¹ The Objectors' arguments, however, concern matters over which the Commission has only limited review authority.¹² The First Amendment to the Constitution and Section 326 of the Act prohibit the Commission from exercising any power of censorship over broadcast station programming.¹³ Licensees are entitled to broad discretion in the scheduling, selection, and presentation of programming.¹⁴ This is particularly so with regard to the

⁶ *Id.* (such as "The Radio Home Visitor," a locally produced, one-hour show serving the blind and visually impaired of Wilkes-Barre).

⁷ 47 U.S.C. § 309(e).

⁸ *Id.* § 309(k); see, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 note 10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sept. 10, 1993); *Arena Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

⁹ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996. Pub. L. No. 104-104, 110 Stat. 56 (1996); see also *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

¹⁰ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹¹ Fiorucci Objection Letter at 1.

¹² *Stephen Diliberto and Kevin M. Walsh, Esq.*, Letter, 22 FCC Rcd 12983, 12984 (MB 2007) ("Stephen Diliberto").

¹³ U.S. Const. amend. I; 47 U.S.C. § 326 ("Nothing in [the] Act shall be understood or construed to give the Commission the power of censorship over radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated . . . by the Commission which shall interfere with the right of free speech by means of radio communication").

¹⁴ See, e.g., *National Broadcasting Company v. FCC*, 516 F.2d 1101, 1112-1113, 1119-1120, 1172 (D.C. Cir. 1974), *cert denied sub nom. Accuracy in Media Inc. v. National Broadcasting Company*, 424 U.S. 910 (1976); see also

programming decisions of NCE stations.¹⁵ The Commission historically “has had the appropriately limited role of facilitating the development of the public broadcasting system rather than determining the content of its programming.”¹⁶ For these reasons, the Objectors have not raised a substantial and material question of fact calling for further inquiry regarding King’s College’s operation of the Station.

Therefore, applying the license renewal standard prescribed by Section 309(k) of the Act to the present case, we find that the Station has served the public interest, convenience, and necessity during the subject license term; has not committed any serious violations of the Act or the Rules while operating the Station; or made any other violations which, taken together, constitute a pattern of abuse. Accordingly, we will deny the Objections.

Conclusion. For the aforementioned reasons, and pursuant to Sections 0.61 and 0.283 of the Rules,¹⁷ IT IS ORDERED that the Informal Objections file by Mario Fiorucci and Richard ARE HEREBY DENIED. IT IS FURTHER ORDERED, that the King’s College Application for renewal of license (FCC File No. BRED-20060327AGC) IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Mr. Mario Fiorucci,
Dr. Richard Aston

Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94, 124 (1973); *Hunger in America*, Memorandum Opinion and Order, 20 FCC 2d 143, 150-151 (1969).

¹⁵ *Stephen Diliberto*, 22 FCC Rcd at 12985.

¹⁶ *Id.* (quoting *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees*, Notice of Proposed Rule Making, 87 FCC 2d 716, 732 (1981)); see also *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 (MB 1993) (licensees have broad discretion over programming decisions).

¹⁷ 47 U.S.C. §§ 0.61, 0.283.